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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 SECURITIES AND EXCHANGE
4 COMMISSION,
5
6 Plaintiff,

v.

15 CV 894 (WHP)

7 CALEDONIAN BANK, LTD., et al.,
8
9 Defendants.
-----x

New York, N.Y.
January 21, 2016
12:30 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,
13
14 District Judge

15 APPEARANCES

16 SECURITIES AND EXCHANGE COMMISSION
17 Attorneys for Plaintiff
18 BY: PATRICK COSTELLO
19 DAVID STOELTING
20 BRIDGET FITZPATRICK
21 DEREK BENTSEN

22 PROSKAUER ROSE
23 Attorneys for Defendant Caledonia Bank
24 BY: MARGARET DALE
25 MASSIEL PEDREIRA-BETHENCOURT

26 CARTER, LEDYARD & MILBURN
27 Attorneys for Defendant Vermont Capital
28 BY: ROBERT ZITO
29 MARK ZANCOLLI

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1 this litigation?

2 MR. COSTELLO: No, I don't believe that happened, your
3 Honor. And with respect to --

4 THE COURT: Was it Caledonian then?

5 MR. COSTELLO: That probably wouldn't have been in
6 Panama, that would be in the Cayman Islands, but all I can do
7 is represent to the Court what the subject matter experts at
8 the Office of International Affairs told me, and that that is a
9 deposition cannot legally take place not only under letters
10 rogatory but also apparently Panamanian law without the letter
11 rogatory process. So unfortunately, your Honor, our hands are
12 tied here.

13 THE COURT: But Vermont is willing to stipulate all
14 of that away.

15 MR. COSTELLO: Well, I understand that Vermont may be
16 willing to do that, but this is not a question of what Vermont
17 is wanting to do, this is a question of legally can we take
18 this deposition in Panama without offending Panamanian law, and
19 our Office of International Affairs said we cannot.

20 With respect to videotape or non-videotape, I have
21 heard of a number of arguments from Vermont's counsel, either
22 Mr. Fisher and Mr. Housser know nothing about the case, in
23 which case it doesn't matter how we do a deposition, videotape
24 or in person, or they do know something. And if they do know
25 something about the case and they are willing to appear on

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1 videotape, they should be willing to appear in person.

2 That goes back to the question of inconvenience or
3 burden, and neither one of those factors is at issue here
4 because the government is going to be picking up the tab for
5 the travel. And if they're concerned about coming to the
6 United States for whatever reason, we would be willing to do
7 that in Canada, and again, be more of a homecoming for them, as
8 I said before.

9 So either they want to be deposed because they know
10 something, or they don't. I'm not sure I understand what
11 Vermont's counsel is getting at, but if they are willing to
12 appear on a videotape, then they should be willing to appear in
13 person. Because as we all know, an in-person deposition is
14 much more meaningful than one on videotape. And all of the
15 attendant burdens that goes with that erased here.

16 THE COURT: Because the SEC is going to bear it.

17 MR. COSTELLO: Correct, your Honor.

18 THE COURT: Mr. Zito, I think you should take up with
19 them where they would like their depositions to be conducted.

20 MR. ZITO: They would like to have it in Panama, your
21 Honor.

22 THE COURT: It's not going to be in Panama in the next
23 three months. The litigation will keep going through letters
24 rogatory, something that none of them want, I would think, they
25 would want to get this resolved.

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1 MR. ZITO: Your Honor, I don't know what is going to
2 happen with this litigation, quite frankly. I don't know how
3 much I'm going to be able to participate in this litigation.

4 THE COURT: I understand that. But they can pick a
5 place where they want to be deposed where it's not subject to
6 the constraints under the Hague Convention. London is such a
7 place, Toronto is such a place. There's probably a lot of
8 other places, as long as they don't pick some place like
9 Tahiti.

10 MR. ZITO: That might be a good alternative.

11 THE COURT: Actually it's winter there now, but even
12 winter in Tahiti isn't bad, although it's rainy.

13 MR. ZITO: I will discuss it with them. This is the
14 first I'm hearing that the SEC was prepared to proceed in
15 anyplace outside the United States. So I am happy to discuss
16 that with them. And I think that if Toronto is amenable to the
17 SEC, as the SEC has represented to this Court that it is, I
18 would have no problems in proposing that to them, your Honor,
19 and I could report back to the Court shortly.

20 THE COURT: And it could be any major city in Canada
21 depending upon where they reside, Vancouver, Edmonton,
22 Montreal.

23 MR. ZITO: How about the Bahamas, your Honor?

24 THE COURT: I don't know what the Hague Convention
25 rules are in the Bahamas. I think if they're willing to appear

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1 by videotape they and there are legal restraints on that in
2 Panama, and the SEC is willing to bear all the attendant
3 expenses for them to appear for depositions outside of the
4 United States, they should pick a place and advise the SEC in
5 the next week as to place. Alternatively, in the absence of
6 such a selection, I may well order a place and then everybody
7 can run to another court and see whether I got it right.

8 MR. ZITO: I will be happy, in the spirit of
9 cooperation, to speak with them. I do want to reiterate the
10 fact that the liquidator has no control over these individuals,
11 and this would be on a purely a voluntary basis. They are not
12 officers or directors, and this is in the spirit -- solely the
13 spirit of cooperation.

14 THE COURT: I appreciate that, but I also think it's
15 in their interest to --

16 MR. ZITO: I think it is, too.

17 THE COURT: -- to give a deposition, and I'm sure you
18 do, too, because otherwise you wouldn't be advising them to
19 come up with --

20 MR. ZITO: I wouldn't be here, your Honor.

21 THE COURT: All right. Now there are a number of
22 document issues here and questions involving Panamanian bank
23 secrecy.

24 MR. ZITO: Your Honor, if I could put a -- there are
25 certain privacy laws in Panama which makes it illegal as a

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